

Appeal from a decision of the California State Office, Bureau of Land Management, declaring the Sin Semilla #1 and the Apache Canyon #1 lode mining claims null and void ab initio. CAMC 37840, CAMC 37841.

Set aside and remanded.

1. Mining Claims: Lands Subject to--State Grants

Land which has been conveyed to a state without a reservation of minerals to the United States is not available for the location of mining claims, and a mining claim located on such land after it is so conveyed is null and void ab initio. The locator of a lode mining claim partly located on school grant lands acquires no surface or mineral rights for that portion of the claims. However, where the record is unclear as to the exact situs of the claim on the ground and the claim may partially cover land which is open to mineral entry, the case will be remanded to BLM to first determine the location of the claim and then to adjudicate the claim accordingly.

2. Mining Claims: Lands Subject to--School Lands:
Generally

The validity of a lode mining claim located partially on school grant lands depends on whether the discovery point is on land open to mineral location.

APPEARANCES: Ed Nazelrod, Baker, California, pro se.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

Ed Nazelrod has appealed from an April 25, 1995, decision of the California State Office, Bureau of Land Management (BLM), declaring his Sin Semilla #1 and Apache Canyon #1 (CAMC 37840 and CAMC 37841) lode mining claims null and void ab initio for the reason that the lands were closed to mineral entry on the dates of attempted location.

The initial location notices for both claims were filed with BLM on September 24, 1979. The notice for the Sin Semilla #1 claim describes the site of location as sec. 36, T. 16 N., R. 9 E., San Bernardino Meridian (SBM). That claim was located on February 7, 1975. The initial location notice for the Apache Canyon #1 states that the claim is in sec. 31, T. 16 N., R. 10 E., SBM. This notice states that the discovery monument is situated about "100 ft. West - 20 [degrees] south of USLM # 84 and 350 yards north west of the old Toltec Mine." The Apache Canyon #1 was located on December 6, 1975. ^{1/}

On September 14, 1992, amended location notices for both claims were filed with BLM. The map submitted with the amended location notice for the Sin Semilla #1 depicts that claim as a triangular claim in the E1/2 of sec. 36, T. 16 N., R. 9 E., jutting into the W1/2 of sec. 31, T. 16 N., R. 10 E., SBM. It describes the claim as located "275 yards south of U.S.L.M. 84 and bordering the Toltec and Aztec lodes on the North Side, the Counselor lode on the East and the Bonanza #1 lode on the South Side, forming a triangular claim."

The map for the Apache Canyon #1 claim shows that claim straddling the section line between sec. 36, T. 16 N., R. 9 E., and sec. 31, T. 16 N., R. 10 E., SBM. The claim is drawn in a rectangular fashion with approximately 1/4 of its area in the NE1/4 of sec. 36 and 3/4 in the NW1/4 of sec. 31. The notice describes the Apache Canyon #1 claim discovery monument as "about 100 ft. Southwest of USLM 84."

BLM's decision states as follows:

The amended location notice for the Sin Semilla #1 lode mining claim (CAMC 37840) describes the claim as being a triangular claim in the E1/2 of sec. 36, T. 16 N., R. 9 E., and W1/2 sec. 31, T. 16 N., R. 10 E., San Bernardino Meridian (SBM) bordering the Toltec and Aztec lode mining claims on the north. The amended location notice for the Apache Canyon #1 lode mining claim (CAMC 37841) describes the claim in the NE1/4 of sec. 36, T. 16 N., R. 9 E., and NW1/4 sec. 31, T. 16 N., R. 10 E., SBM, bordering the Toltec and Aztec lode mining claims on the south side.

^{1/} The file contains a U.S. Geological Survey map filed with BLM on Sept. 24, 1979. The Sin Semilla #1 claim is drawn on that map as located entirely within sec. 31. The Apache Canyon #1 claim is also shown almost completely within sec. 31; only a tiny corner projects into sec. 36. Also filed with BLM on Sept. 24, 1979, was a hand-drawn sketch map. It depicts the patented Toltec and Aztec lode mining claims as sandwiched between the Apache Canyon #1 claim on the north and the Sin Semilla #1 claim on the south. A sec. 36/sec. 31 section line is not shown on the drawing.

The official records of this office show that the Toltec and the Aztec lode were patented as part of Mineral Survey 3992 under Patent Number 38329. The Master Title Plat for T. 16 N., R. 9 E. SEM, shows the Toltec lode and the west half of the Aztec lode of M.S. 3992 in sec. 36. Thus the records of this office show that the Sin Semilla #1 lode and Apache Canyon #1 lode are located only in sec. 36, T. 16 N., R. 9 E., SEM. The records also show that the remaining land in sec. 36, outside the patented mining claims, is School Grant land. Pursuant to the Act of March 3, 1853, title to school grant lands vest[s] in a state upon approval of an approved survey of that section. The survey of section 36 was approved July 1, 1958. School Grant lands are without a reservation of minerals to the United States. Therefore, the lands were closed to the location and entry of mining claims on the day the Survey of section 36 was approved and remained closed on February 7, 1975, and December 6, 1975, the dates of attempted location.

Nazelrod explains in his notice of appeal that when he originally filed the Sin Semilla #1 claim he relied on the "Assessor's Parcel Map," San Bernardino County, California. That map, Nazelrod asserts, showed the triangular parcel (Sin Semilla #1) in both secs. 36 and 31. Nazelrod states that he located the claim in reliance upon information received from county personnel to the effect that the parcel was available for location.

Nazelrod states that his original discovery point of the Sin Semilla #1 claim "lies within sec. 31." Nazelrod requests the right to relocate the part of the Sin Semilla #1 which lies in sec. 31, which he asserts contains his discovery point, and abandon that part of the claim within sec. 36. Nazelrod states that the Apache Canyon #1 claim "is, and always has been, entirely within Sec. 31," as shown on the map accompanying his original filing.

The file contains three copies of old plats depicting the Toltec, Aztec and Montezuma lodes (M.S. 3992), and the Bonanza and Himalaya lodes (M.S. 3899A) in secs. 31 and 36. ^{2/} A north-south township line has been added to these plats in what appears to be red ball point pen. The line divides the Aztec lode approximately two-fifths/three-fifths between secs. 31 and 36 and places U.S.L.M. No. 84 within sec. 31. Hand drawn in orange pencil on the plat depicting the Toltec, Aztec, and Montezuma lodes are shaded areas representing Nazelrod's claims and placing them within sec. 36.

^{2/} These plats bear General Land Office stamps dated May 14, 1910, and May 12, 1916, certifying them as true copies of the official survey of the lands on which the claims are situated.

BLM's master title plats (current to December 8, 1993) of partially surveyed T. 16 N., Rs. 9 and 10 E., SBM, show the boundaries of patented M.S. 3992 and 3899A situated in secs. 31 and 36. While sec. 36 is patented to the State of California, sec. 31 is not. These master title plats do not show Nazelrod's claims, nor U.S.L.M. No. 84, a location reference for those claims.

[1, 2] According to BLM, with the exclusion of mineral survey lands, sec. 36 in T. 16 N., R. 10 E., SBM, was part of a school grant, title to which vested in the State of California, on July 1, 1958. See Act of March 3, 1853, ch. 145, 10 Stat. 244. If Nazelrod's claims were, in fact, located in sec. 36, T. 19 S., R. 10 E., SBM, then BLM properly declared the claims null and void ab initio because that land was conveyed to the State without a reservation of minerals to the United States. David A. Smith, 128 IBLA 249, 250 (1994). Nazelrod, however, maintains that the Apache Canyon #1 claim is entirely within sec. 31, T. 16 N., R. 9 E., SBM, and that the Sin Semilla #1 claim is at least partially within that section.

The Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1994), requires a claim owner to file with BLM a copy of his notice or certificate of location "including a description of the location of the mining claim * * * sufficient to locate the claimed lands on the ground." Regulations implementing that provision have always required the filing of a map and/or a narrative or sketch sufficient to identify the claim. 43 C.F.R. § 3833.1-2(c)(6) (1979) (for claims located prior to Oct. 21, 1976); see 43 C.F.R. § 3833.1-2(b)(5)(ii); The Carrow Co., 115 IBLA 102, 103 (1990); Arley Taylor, 90 IBLA 313, 316 n.1 (1986).

Location notices are required to provide "a description of the claim or claims located by reference to some natural object or permanent monument as will identify the claim." 30 U.S.C. § 28 (1994); see generally Vedin v. McConnell, 22 F.2d 753, 756-57 (9th Cir. 1927). If a location notice description is inaccurate, the situs of the claim on the ground as disclosed by its monuments controls over any conflicting descriptions or maps. See United States v. Kincanon, 13 IBLA 165, 168 (1973).

Nazelrod's amended notices of location appear to meet these requirements. Inasmuch as they refer to U.S.L.M. No. 84 they appear to refer to a permanent monument as required by 30 U.S.C. § 28 (1994). See Vevelstad v. Flynn, 230 F.2d 695, 701 (9th Cir.), cert. denied, 352 U.S. 827 (1956). In Arley Taylor, supra at 317, we stated: "the test established by statute for the sufficiency of a recorded description is whether the claim may in fact be found and identified by following the recorded description. 2 American Law of Mining, § 33.09[3] (2d ed. 1984)."

In certain cases where nothing in the record was sufficiently precise to determine whether a claim was situated on ground not open to location, the Board has required BLM to determine the situs of the claim on the ground. E.g., Leslie Corriea, 93 IBLA 346 (1986). This is such a

case. If BLM determines that Nazelrod's claims are wholly within the school grant lands of sec. 36, T. 16 N., R. 9 E., SBM, it could properly declare the claims null and void ab initio. See United States v. Wyoming, 331 U.S. 440, 443 (1947); David A. Smith, *supra*.

However, BLM may not declare a lode mining claim null and void ab initio merely because it is located partially on land unavailable for mineral location. If Nazelrod's claims only partially include land which is closed to mineral entry their validity would depend on whether they are supported by a discovery on land which is open to mineral entry. A locator whose discovery is on lands open to location may extend the end lines and side lines of his claim across patented or withdrawn land to define the extralateral rights to lodes or veins which apex within the claim, although he will not have any rights to the surface of these lands, and, depending on the circumstances, may or may not have any mineral rights in the subsurface of such land. Butte Lode Mining Co., 131 IBLA 284, 289 (1994); 3/ Amelia Marglin Whitson, 101 IBLA 1, 4 (1988); Leslie Correia, *supra* at 350.

Until the exact location of Nazelrod's claims on the ground is determined it is impossible to state whether the claims are null and void ab initio in their entirety or whether they are partially located on land open to mineral entry with the potential for attendant rights. Accordingly, we must set aside the decision and remand the case to BLM to determine the location of Nazelrod's claims on the ground and to readjudicate them. Nazelrod will have the right to appeal from any adverse BLM decision but he will have the burden of establishing the location of his mining claims. Leslie Correia, *supra* at 349-50.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is set aside and the case is remanded for further action consistent with this decision.

Bruce R. Harris
Deputy Chief Administrative Judge

I concur:

James L. Byrnes
Chief Administrative Judge

3/ Vacated in part, on other grounds, 131 IBLA 292A (1995).